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Convention on the Rights of the Child

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Committee on the Rights of the Child

Consideration of reports submitted by States parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Reports of States parties due in 2016

Estonia*

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1. This report is the first report of the Republic of Estonia on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

2. The Republic of Estonia acceded to the Convention on the Rights of the Child by resolution of the Supreme Council of the Republic of Estonia of 26 September 1991, the letter of accession was deposited with the UN Secretary-General on 21 October 1991 and the Convention entered into force for Estonia on 20 November 1991. The text of the Convention on the Rights of the Child has been published in Part II of the Riigi Teataja (state gazette). The legislation published in the Riigi Teataja can be accessed through the website www.riigiteataja.ee. Part II of the Riigi Teataja is for the publication of international agreements and their translations into Estonian. The Constitution of the Republic of Estonia determines the position of the rules of international law within the Estonian legal system. Pursuant to §§ 3 and 123 of the Constitution of the Republic of Estonia, when laws or other legislation of Estonia are in conflict with an international treaty ratified by the Riigikogu (parliament), provisions of the international treaty apply. Consequently, the Convention on the Rights of the Child ratified by the Riigikogu is part of the Estonian legal system and directly applicable in court.

3. Estonia signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 24 September 2003 and ratified it on 18 December 2013. The Protocol entered into force for Estonia on 12 March 2014. According to Article 3 (2) of the Protocol, the Republic of Estonia declared upon ratification of the Protocol that the minimum age at which it will permit voluntary recruitment into its national armed forces is 18 years of age.

4. This report has been prepared by the Ministry of Defence.

5. The unlawful acts and violations described in the Optional Protocol are punished under the Penal Code and procedural acts are performed under the Code of Criminal Procedure.

6. Translations into English of the Constitution of the Republic of Estonia, the Penal Code, the Code of Criminal Procedure, the Military Service Act, the Estonian Defence League Act and the National Defence Act referred to in the report are available on the website www.riigiteataja.ee.

7. Pursuant to § 13 of the Constitution of the Republic of Estonia, everyone is entitled to protection by the government and of the law, and the law protects everyone from arbitrary exercise of governmental authority. According to § 124 of the Constitution of the Republic of Estonia, citizens of Estonia have a duty to participate in national defence in accordance with the principles and procedure provided by the law.

8. Estonian legislation concerning military service and participation therein considers the definition of a child provided for in Article 1 of the UN Convention on the Rights of the Child, and such persons are not accepted for military service under a compulsory procedure or voluntarily.

9. After regaining its independence, the Republic of Estonia has followed the above mentioned principle for persons called up for conscript service under a compulsory procedure and persons accepted for active service ever since the legislation governing military service was established. The first Military Service Act was adopted on 9 March 1994.

10. The subjects of the national defence obligation, military service and alternative service, the legal status thereof and the organisation of the performance of the national defence obligation are provided for in the Military Service Act. Pursuant to § 2 of the Act, the national defence obligation is an obligation of an Estonian citizen to participate in the

national defence and the performance of procedures provided for in this Act. The national defence obligation applies to a male person between the ages of 18 and 60 years of age, and such a person is called a person liable to national defence obligation. Under the same Act, a person liable to national defence obligation is also a male person between the ages of 17 and 27 until entering conscript service or alternative service or until release from conscript service or alternative service, and such a person is called a call-up selectee. A call-up selectee 17 years of age is a potential member of the armed forces who can be accepted for service after attaining the age of 18.

11. An Estonian citizen who is not under the national defence obligation may undertake it voluntarily. According to § 81 of the Military Service Act, a person must be 18 years of age to undertake the national defence obligation.

12. Pursuant to § 5 of the Military Service Act, the performance of the mandatory duty to serve in the Defence Forces is the obligation of a person liable to national defence obligation to undergo the conscript and reserve service in the Estonian Defence Forces within the determined period of time. A person who is performing the mandatory duty to serve in the Defence Forces is a person liable to mandatory duty to serve in the Defence Forces. Conscript service is the performance of the mandatory duty to serve in the Defence Forces of a male person liable to national defence obligation and the voluntary entering military service of a female person, and the completion thereof with the purpose to acquire military training.

13. Records of persons liable to national defence obligation are kept in the national defence obligations register which shall be founded and the statutes of which shall be established by a regulation of the Government of the Republic (No. 24 of 28 March 2013).

14. A call-up selectee is required to undergo evaluation of his state of health and assessment of his professional suitability as provided for in Chapter 4 of the Military Service Act. Under § 37 of the Act, a call-up selectee who is at least 18 years of age may be called up for conscript service. A female person who is also at least 18 years of age may voluntarily enter conscript service (§ 82 of the Act).

15. The call-up of call-up selectees for conscript service and alternative service, the assessment of their compliance with the health requirements by medical commissions, the assessment of their professional suitability and the recognition of persons wishing to undertake the national defence obligation as persons liable to national defence obligation are carried out by the Defence Resources Agency whose statutes have been established by a regulation of the Government of the Republic (No. 25 of 27 march 2013). The Defence Resources Agency also organises the keeping of records of Estonian citizens liable to national defence obligation in the national defence obligation register. The Agency reports to the Minister of Defence who guides and co-ordinates the activities of the Agency and exercises supervisory control over the Agency. The Defence Resources Agency is not subordinated to and it does not report to the Defence Forces.

16. Pursuant to Chapter 7 of the Military Service Act, the mandatory duty to serve in the Defence Forces is also performed in reserve service, or in other words in reservist training. A person liable to national defence obligation who is not a call-up selectee nor serves in the alternative or military service is called up for reservist training, and such a person is called a person in reserve (§ 2 (4) of the Act). A person in reserve is between the ages of 18 and 60.

17. Under § 83 of the Military Service Act, a person to be accepted for active service is an Estonian citizen who is at the age of 18–60.

18. On the basis of § 48 (2) of the Constitution of the Republic of Estonia, the establishment of associations and federations which possess weapons, which are organised in accordance with military principles or which hold exercises of a military nature is permitted in the Republic of Estonia under a prior authorisation. Such an organisation is the Defence League within the area of government of the Ministry of Defence. Upon determining the Defence League to be a legal person governed by public law, the state has defined the status, purposes, activities and training of different members by the Estonian Defence League Act.

19. According to § 23 of the Estonian Defence League Act, the members of the Defence League are divided into active, junior, supporting and honorary members. Pursuant to § 25 of the Act, Estonian citizens of at least 7–18 years of age and other natural persons of the same age range who are permanent residents of Estonia may be junior members. Under § 24 of the Act, an Estonian citizen of at least 18 years of age may be an active member. As provided for in § 4 (1) of the Act, the Defence League shall perform the following tasks:

1) Participate in strengthening patriotic and national feelings, maintaining and increasing the defence will of the citizens of Estonia;

2) Prepare the national defence capability of the state;

3) Participate in enhancing and ensuring security of the Estonian residents;

4) Provide and organise military training to active members;

5) Provide and organise other training and education;

6) Develop and value physical education and sports among the population;

7) Ensure, where necessary, the guarding of the national defence objects and property used for national defence purpose and of foreign missions of Estonia;

8) Perform other tasks assigned thereto by laws and the legislation established on the basis thereof.

20. Pursuant to § 25 (6) of the Estonian Defence League Act, a junior member cannot be invited to participate in the performance of tasks provided for in § 4 (1) 2), 4), 7) and 8) of the Act, and a junior member of the Defence League also cannot be involved in assisting authorities.

21. Obliging a person liable to national defence obligation to perform the tasks of a wartime post of military rank is governed by the National Defence Act. § 81 (1) of the National Defence Act provides that a person liable to national defence obligation at the age of 18 years and older and an active member of the Defence League not liable to national defence obligation who is appointed to a wartime post are required to commence performance of tasks of a wartime post by the mobilisation order. An active serviceman and a conscript are required to commence performance of tasks of a wartime post by a decision of the Commander of the Defence Forces. The decision of the Commander of the Defence Forces is deemed to be equivalent to the mobilisation order.

22. According to § 73 of the National Defence Act, during a state of war and mobilisation a person at least 18 years of age may be accepted for active service.

23. The jurisdiction of the Penal Code is provided for in §§ 5 through 9 of the Penal Code. The penal law of Estonia applies to acts committed within the territory of Estonia.

24. A punishment shall be imposed pursuant to the law in force at the time of commission of the act. An Act which precludes punishability of an act, mitigates a punishment or otherwise alleviates the situation of a person shall have retroactive effect. An

Act which declares an act as punishable, aggravates a punishment or otherwise exacerbates the situation of a person shall not have retroactive effect.

25. The penal law of Estonia applies to an act committed outside the territory of Estonia if such an act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and if:

1) The act is committed against a citizen of Estonia or a legal person registered in Estonia;

2) The offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited.

26. Regardless of the law of the place of commission of an act, the penal law of Estonia applies to acts committed outside the territory of Estonia if according to the penal law of Estonia the act is a criminal offence in the first degree and if such act:

1) Causes damage to the life or health of the population of Estonia;

2) Interferes with the exercise of state authority or the defence capability of Estonia; or

3) Causes damage to the environment.

27. Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to any acts committed outside the territory of Estonia if punishability of the act arises from an international obligation binding on Estonia.

28. According to international law, the forced recruitment of children is prohibited and punishable in the case of an international armed conflict as well as an armed conflict not of an international character (Art. 8 of the Rome Statute). On 1 January 2015, an amendment of the Penal Code declaring the recruitment of children in armed forces or their engagement in acts of war to be a criminal offence entered into force. Under § 1023 of the Penal Code, acceptance or recruitment of a person younger than eighteen years of age in national armed forces or armed units separate from the national armed forces or engagement in acts of war is punishable by one to five years' imprisonment. The same act, if committed by a legal person, is punishable by a pecuniary punishment. In furnishing the definitions "national armed forces" and "armed units separate from the national armed forces" set out in that section, international humanitarian law, the Optional Protocol in question and national law must be taken into account. In determining whether belonging to a specific association, group or organisation is covered by said definitions, the objectives of said association, organisation or group and the restrictions on the activity and military training of different groups of members must also be taken into account. Although under certain circumstances the active members of the Defence League may be considered as members of the armed forces, the restrictions applicable to junior members exclude such status. Engagement of minors, including junior members of the Defence League in direct acts of war will also remain prohibited.

29. Information on the performance of the mandatory duty to serve in the Defence Forces and on the organisation of active service is distributed through various channels. Such information is mainly available in the citizen's portal at www.eesti.ee, and on the website of the Defence Resources Agency at www.kra.ee. National defence studies offered as a selective course in upper secondary school also cover the relevant regulatory framework and restrictions.